ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Amendment to the Commission's Rules	)	
Regarding a Plan for Sharing the Costs	)	WT Docket No. 95-157
of Microwave Relocation	)	RM-8643

To: The Commission

COMMENTS OF BELLSOUTH CORPORATION

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SUMMARY

BellSouth generally supports the Commission's proposal to adopt rules that would require PCS licensees to share the costs associated with relocating incumbent 2 GHz microwave licensees. Adoption of cost-sharing rules will facilitate the prompt and efficient clearance of spectrum and will promote the relocation of microwave systems in their entirety. Accordingly, the Commission should indicate that all emerging technology providers will be required to share the cost of relocating incumbent licensees and that specific cost-sharing rules for non-PCS emerging technology providers will be promulgated at a later date.

The Commission should simplify the PCS cost-sharing proposal, however, by condensing the formula for determining the contribution amount and by revising its reimbursement table to more accurately reflect when full, partial or no reimbursement will be required. The proposed formula can be condensed algebraically such that the "T_N-T_I" calculation is eliminated and replaced with one figure, T_M, which is simply the number of months that have passed since the Relocator obtained its reimbursement rights.

The Commission also should modify the mechanics of its cost-sharing plan to reduce the potential for disputes. Specifically, the Commission should explicitly state that only co-channel interference, as determined by certain equations in TIA Bulletin 10-F and the Irregular Terrain Model, will trigger a cost-sharing obligation. The Commission also should state that reimbursement rights are acquired on the date a microwave link ceases operation. Absent these clarifications, there will inevitably be disputes over whether the acquisition date of reimbursement rights is the date an agreement is reached or the date the microwave path ceases operation. Similarly, parties may dispute whether there will be co-channel interference based on the use of different methods or programs for determining co-channel interference. If these disputes are not pre-empted by clarifying the cost-sharing principles, PCS entities will lack incentives to negotiate system-wide phased-in relocations, and PCS deployment may be slowed as a result.

BellSouth urges the Commission to allow reimbursement for the replacement of analog equipment with digital equipment during the voluntary negotiation period only, as an inducement for early relocation,. Similarly, the Commission should revise its rules to state that an incumbent's facilities will revert to secondary status automatically if it has failed to accept an offer for relocation to comparable facilities during the mandatory negotiation period.

BellSouth supports the Commission's tentative conclusion to allow an industry-supported clearing house to administer the cost-sharing program. To ensure the integrity of such a clearing house, the Commission should choose a not-for-profit, independent entity. Further, the entity selected to function as the clearing house should be able to commence operations within ninety days and be able to ensure the confidentiality of the information it collects.

Based on BellSouth's experience negotiating relocation agreements to date, the Commission should modify its cost-sharing caps such that tower modifications are included under the

$150,000 cap previously limited to new tower construction, rather than the $250,000 cap on per link expenses. This change is necessary because many microwave towers are over stressed or in a state of disrepair such that costly modifications must be made to the tower before 2 GHz facilities may be replaced by comparable facilities. If tower modifications remain subject to the $250,000 cap, parties would be encouraged to build new towers rather than modify existing towers in need of repair.

Finally, the Commission should be lauded for its proposal to allow entrepreneurs to satisfy their reimbursement obligations in installments subject to a low interest rate. However, UTAM should not be entitled to the same payment plan. Given the size of many of UTAM's members, there is no reason for PCS licensees to "subsidize" their reimbursement obligations. Accordingly, the Commission should allow UTAM to make installment payments over a period of five years, subject to an interest rate of prime plus 3 percent.

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To: The Commission

COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation, on behalf of its wireless subsidiaries and affiliates, hereby comments on the Commission's *Notice of Proposed Rule Making*, WT Docket No. 95-157, FCC 95-426, released October 13, 1995. BellSouth supports the Commission's cost-sharing proposal but believes that it should be clarified and modified, as discussed below, in order to minimize disputes and facilitate the rapid deployment of PCS systems.

I. Adoption of Rules Requiring PCS Entities to Share the Costs Associated With Relocating Incumbent 2 GHz Microwave Licensees is in the Public Interest

The Commission should adopt rules requiring all PCS entities that benefit from the relocation of a particular co-channel incumbent 2 GHz microwave licensee to share in the costs associated with that relocation. BellSouth has been working actively within the Personal Communications Industry Association ("PCIA") to develop and refine such a cost-sharing mechanism.

As the Commission recognizes, "some spectrum blocks assigned to [2 GHz] microwave incumbents overlap with one or more PCS blocks."[1] Accordingly, a PCS entrant may be

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[1] *NPRM* at ¶ 15.

obligated to relocate microwave links that cross multiple PCS market boundaries and are co-channel to multiple PCS frequency blocks. Without a cost-sharing requirement, some PCS entities can benefit by waiting for other PCS entities to clear spectrum which overlaps with various PCS frequency blocks. The public interest would be served better if this "free rider" problem is eliminated. Cost-sharing does that. More importantly, cost-sharing creates incentives for the prompt roll-out of PCS, which will meet the Commission's objective of ensuring the rapid, ubiquitous, and competitive availability of PCS. Without cost-sharing, many PCS entities may be incented to delay PCS deployment.

One practical reality of relocation is that microwave incumbents in many cases have multi-link systems; they want those systems relocated as an integral unit, not in a piecemeal fashion. The cost-sharing mechanism proposed in the *NPRM*, as modified herein, will encourage system-wide relocations of microwave networks.

Absent cost-sharing, an incumbent microwave licensee with multiple links may be presented with two undesirable alternatives: (1) offers to relocate its links separately to accommodate each PCS entity's desire to relocate individual links; or (2) the prospect of waiting until the end of the two-year voluntary negotiation period, in the hope that by that time there will be sufficient PCS entities wishing to relocate individual links that virtually its entire system will be relocated at one time. With cost-sharing, however, the multiple-link microwave incumbent is more likely to find a Relocator willing to relocate the entire network early in the voluntary negotiation period.

A cost-sharing requirement should generally be applicable to all emerging technology providers, but specific cost-sharing requirements should be imposed for each new emerging

technology service in separate NPRMs. Each new service and each new group of affected microwave incumbents present unique technical, financial, and other considerations.[2] By establishing only the general conceptual framework for cost-sharing by other emerging technology services (*i.e.*, non-PCS), the Commission will put prospective licensees for these other services on notice that they will be subject to cost-sharing obligations while retaining the ability to adapt its general cost-sharing rules to the requirements of particular services.[3] Further, the Commission would be free to propose cost-sharing rules for other services that differ from those adopted here, based on its experience implementing the PCS cost-sharing rules.

II. Cost-Sharing Formula Should Be Simplified

BellSouth generally supports the Commission's cost-sharing proposal but believes that the formula for calculating contributions can be simplified conceptually and algebraically. The Commission proposes to require a PCS entity to share in relocation costs according to the following calculation:

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2 For similar reasons, the FCC adopted a general policy framework for the use of auctions but adopted specific auction rules for different services in separate proceedings. *See Implementation of Section 309(j) of the Communications Act — Competitive Bidding,* PP Docket No. 93-253, *Second Report and Order*, 9 F.C.C.R. 2348 (1994) (general auction rules); *Third Report and Order*, 9 F.C.C.R. 2941 (1994) (Narrowband PCS auction rules); *Fourth Report and Order*, 9 F.C.C.R. 2330 (1994) (IVDS auction rules); *Fifth Report and Order*, 9 F.C.C.R. 5532 (1994) (Broadband PCS auction rules).

3 For example, larger cost-sharing caps may be warranted for the relocation of incumbent microwave licensees which typically use longer paths with much higher capacity. Similarly, the cost-sharing mechanism adopted for services (such as PCS) where thousands of entities may be engaging in, or the beneficiaries of, relocation may not be appropriate for services (such as the Mobile Satellite Service) where the relocation expenses and benefits are borne by a handful of entities.

$$R_N = \frac{C}{N} \times \frac{120 - (T_N - T_1)}{120}$$

R_N equals the amount of reimbursement.
C equals the amount paid to relocate the link.
N equals the next PCS entity that would interfere with the link. (The PCS Relocator is denominated as N=1. After the link is relocated, the next PCS provider that would interfere would be 2, and so on.).

As proposed in paragraph 25 of the *NPRM*, T_N would equal "T_1 plus the number of months that have passed since the Relocator obtained its reimbursement rights." T_1 is to be "the month that the first PCS licensee obtained its rights to reimbursement." Algebraically, however, after substituting from the above suggested definitions, the quantity "(T_N - T_1)" can be written as: (T_1 + (the number of months that have passed since the Relocator obtained its reimbursement rights) - T_1). Simplifying the formula by subtracting T_1 from T_1, the only quantity left is "(the number of months that have passed since the Relocator obtained its reimbursement rights)." BellSouth suggests that this remaining quantity be redefined as T_M. With that adjustment, the formula would be:

$$R_N = \frac{C}{N} \times \frac{120 - T_M}{120}$$

For administrative expediency and convenience, T_M commences (*i.e.*, equals 1) on the first day of the calendar month after the Relocator obtained its reimbursement rights and is calculated at month to month, rather than thirty day, intervals. Thus, T_M would equal 1 where a Relocator acquired its reimbursement rights on December 30, 1995 and a subsequent PCS entity places interfering facilities into operation on January 2, 1996. This change simplifies the formula without undoing its impact. Without this simplification and associated definitional change, there could be disagreements over how "months" are to be counted.

To ensure uniformity in application and avoid disagreements over cost-sharing obligations, BellSouth also supports the Commission's tentative conclusion that premium payments should not be reimbursable, even under an accelerated depreciation plan. Adoption of an accelerated depreciation plan for premium payments will cause confusion and will result in subsequent PCS entities subsidizing the premiums paid by their competitors.

III. The Commission Should Clarify When Full, Partial, and No Reimbursement Will Be Required

BellSouth supports a cost-sharing mechanism that encourages the relocation of entire 2 GHz microwave systems, rather than a piecemeal link-by-link approach. Accordingly, BellSouth agrees with the proposal to allow PCS entities to receive full reimbursement (up to the cost-sharing caps) for relocating 2 GHz microwave links that are located outside of their service areas, as well as links that are within their service areas but outside of their frequency blocks. However, BellSouth believes the Commission's table describing reimbursement in various instances is contrary to the Commission's analysis in the *NPRM*.

Moreover, the reimbursement table is difficult to decipher without a conceptual framework. The following fundamental considerations establish the framework.

1. Reimbursement will be required only for co-channel microwave links that have been assigned primary status by the Commission and have at least one endpoint within a PCS entity's authorized operating territory (*NPRM* at ¶ 54).

2. A co-channel case occurs when the microwave incumbent's authorized transmit spectrum overlaps, to any degree, a PCS entity's authorized spectrum. There will be no consideration of the impact of adjacent channel interference; it would over complicate any reimbursement scheme to such a degree that it would be unworkable.

3. A reimbursement obligation arises when:

A. The subsequent PCS entity's systems would have caused co-channel interference to the link that was relocated;

B. At least one endpoint of the former link was relocated within the subsequent PCS entity's authorized market area (*e.g.*, MTA, BTA, or the entire United States for purposes of unlicensed PCS spectrum); and

C. The link has been assigned primary status by the Commission.

4. There will be a cost-sharing cap of $250,000 on general relocation expenses and a separate cap of $150,000 for the costs of constructing or modifying all towers associated with a link.[4] *It is recognized that the actual costs of relocation and tower construction may exceed the respective caps for certain links.*

5. A link is comprised typically of paired transmitting and receiving antennas and associated electronics located at two end points separated by an air interface.

The foregoing is modified somewhat by appropriate application of the cost-sharing formula which is addressed in the analysis following the revised Reimbursement Table. Specifically, BellSouth suggests that the table contained in paragraph 34 of the *NPRM* be changed to read:

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[4] The $150,000 tower construction and modification cap is discussed *infra*, at pages 18-19.

REIMBURSEMENT TABLE
(Reimbursement Up To The Cost-Sharing Caps)

	Fully Within Relocator's Block	Partly Within Relocator's Block	Outside of Relocator's Block
Both Endpoints Inside Relocator's Market	A1 No Reimbursement	B1 *Pro Rata* Reimburse-ment	C1 100 Percent Reimbursement
One Endpoint Inside Relocator's Market	A2 50 Percent Reimbursement	B2 *Pro Rata* Reimbursement	C2 100 Percent Reimbursement
No Endpoints Within Relocator's Market	A3 100 Percent Reimbursement	B3 100 Percent Reimbursement	C3 100 Percent Reimbursement

The differences between the Commission's proposed chart and the revised chart are the reimbursement results indicated in blocks C1, A2, and C2.[5]

Blocks C1 and C2 should be revised, as shown above, to show that if a relocated link is located outside the Relocator's block or market, the Relocator is entitled to 100 percent reimbursement for the maximum allowable costs associated with the relocation under the caps ($250,000 per link/$150,000 for towers).[6] Full reimbursement under the caps is warranted (as in blocks A3, B3, and C3) because subsequent PCS entrants clearly benefit from the relocation. But for the relocation, the subsequent PCS entity would not have been able to commence operations. Thus, the subsequent PCS entrant should pay the costs associated with the relocation

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[5] A header to the chart also has been added to make clear that all reimbursement is subject to the cost-sharing caps. The Commission's proposed chart (*NPRM* at ¶ 34) indicates that reimbursement is limited by the cost-sharing caps only in situations defined in row three (blocks A3, B3, C3).

[6] When there is 100 percent reimbursement, the party making the reimbursement acquires the right to reimbursement from subsequent PCS entities pursuant to the reimbursement table. Thus, the party making the initial 100 percent reimbursement would become the Relocator for purposes of the table.

regardless of who accomplished the relocation. Application of the caps ensures that only reasonable costs are reimbursable. The Relocator must absorb all costs associated with the relocation that exceed the caps and does not recoup the interest lost on monies expended on relocation. The Relocator's efforts allow a later entrant to begin operations quickly because its spectrum has been cleared. Thus, because the relocation bestows significant benefits on later entrants (and the public interest), full reimbursement is warranted for the Relocator.

Similarly, the A2 block should be revised to allow the Relocator to receive reimbursement for fifty percent of its costs (up to the caps) for relocating a link with only one endpoint in its market on its frequencies. The relocation costs for both ends of the link should be aggregated and then evenly split between the Relocator and the co-channel adjacent market PCS entity. The cost aggregation avoids disagreements between the parties concerning the expenses otherwise attributable to each endpoint. Such reimbursement, however, should not be subject to the cost-sharing formula, which factors in depreciation. Under block A2, the Relocator is relocating a link with a single endpoint in its market operating on its block and *a second endpoint located in the market of another PCS provider licensed at the same time as the Relocator* and operating on the same block.[7] It is not in the public interest to depreciate the relocation costs for a PCS entity receiving an immediate benefit. If reimbursement were subject to depreciation under this scenario, PCS entities would have the incentive to defer relocating microwave links and deploying their systems with the hope that the adjacent PCS system would relocate the link and "subsidize" its relocation expenses. Such a result would be contrary to the FCC's determination that the public interest is served by rapid deployment of PCS.

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[7] PCS licenses for the same blocks are auctioned at the same time.

Block B2 also should be revised to indicate specifically that the Relocator is entitled to a *pro rata* reimbursement *up to the amount allowed under the caps*. Cost-sharing under B2 only occurs between PCS licensees on the A and D Blocks, D and B Blocks, B and E Blocks, E and F Blocks, and F and C Blocks. Unlike the previous example, the cost-sharing formula should apply here because, with the exception of cost-sharing between the E and F Block PCS licensees, one of the Blocks will have been authorized prior to the other. Specifically, A, B, and C Block PCS licensing will be completed prior to D, E, and F Block PCS licensing. Accordingly, the D, E, and F Block licensees should be entitled to a depreciation allowance because the benefit from the relocation will not flow to them until a later date.[8]

Finally, the chart only addresses the relocation of microwave facilities assigned primary status. A PCS entity should not have to relocate a microwave facility assigned secondary status, nor should it be required to share in the costs associated with such a relocation. In this regard, BellSouth supports the Commission's tentative conclusion to continue licensing 2 GHz microwave facilities but only assign primary status to new facilities in extremely limited circumstances and to assign secondary status when 2 GHz facilities are modified, unless the modifications are minor and would not add to the cost of relocation.[9] Microwave licensees are on notice that PCS systems are being licensed and soon will be deployed in various markets.[10] Accord-

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[8] Although the E and F Block licenses will be issued at the same time, and thus the relocation of a path crossing both Blocks would confer an immediate benefit upon both licensees, the cost-sharing formula still should be applied in the interest of administrative efficiency.

[9] *NPRM* at ¶ 89.

[10] *See* FCC Public Notice, Mimeo No. 23115 (May 14, 1992), *aff'd, First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 7 F.C.C.R. (continued...)

ingly, PCS entities should not be required to relocate any new 2 GHz microwave facilities that are placed in operation after October 12, 1995, the release date of this *NPRM*.

IV. Mechanics of Cost-Sharing Plan

Although BellSouth generally supports the Commission's cost-sharing proposal, certain clarifications and modifications should be made to ensure that it is implemented smoothly.

A. Acquisition of Reimbursement Rights

In paragraph 30 of the *NPRM*, the Commission states that depreciation should be calculated from the date the Relocator acquires its interference rights, rather than from the date the Relocator places its PCS system into operation. The Commission theorizes that the date of acquisition is more easily ascertained than the date of operation. To avoid disputes, however, the Commission should clarify what constitutes the "acquisition date."

A number of relocation agreements have been negotiated already. BellSouth's agreements establish a timetable for the relocation of various links within each incumbent's system. It is expected that other PCS entities are acting similarly. For example, a Relocator and an incumbent 2 GHz microwave licensee may enter into an agreement whereby the incumbent agrees to the relocation of its system over time and where operation of the links close to major metropolitan areas will cease first, followed by paths in outlying areas.

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[10] (...continued)
6886, 6886 n.5, 6891-92 & n.40 (1992), *Third Report and Order and Memorandum Opinion and Order*, 8 F.C.C.R. 6589, 6611 (1993).

The Commission should clarify that the reimbursement rights are acquired on the date the incumbent actually ceases operation of the microwave link, not the date the agreement is executed. Reliance on a contract execution date would overlook the practicality of a phased-in approach to relocation. During the voluntary negotiation period, the commercial judgment of the parties should prevail.

The Commission also should clarify that although incumbent 2 GHz licensees are entitled to a twelve month trial period for relocated facilities, this trial period is not inviolate and can be reduced or eliminated pursuant to contract. For example, the incumbent might be willing to negotiate a relocation package whereby it agrees to build its own relocated facilities and waives the trial period. If the microwave incumbent constructs its own relocated system, the incumbent should not be entitled to demand that it be restored to its original operating status in the 2 GHz band because its new facilities are not comparable. The new facilities would have been designed and constructed to the incumbent's specifications, not those of the Relocator. It should not be overlooked that many of the microwave incumbents are sophisticated telecommunications users with substantial experience and resources of their own.

BellSouth also agrees with the Commission's efforts to facilitate relocation during the voluntary negotiation period.[11] Specifically, BellSouth supports the Commission's proposal to require that two independent cost estimates be filed with the Commission by parties that have not reached a relocation agreement within one year after the commencement of voluntary

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[11] *NPRM* at ¶¶ 69, 76, 78.

negotiations.[12] These appraisals will facilitate deadlocked negotiations and, if the negotiations extend into the mandatory negotiation period, will set the standard for good faith negotiations.[13]

In this regard, BellSouth also supports the Commission's tentative conclusion that microwave licensees claiming to be Police Radio, Fire Radio, or Emergency Medical, or Special Emergency Radio Service providers should be required to prove that they are providers of such services before they are eligible for the extended negotiation period associated with these licenses. Specifically, an incumbent microwave licensee claiming public safety status must provide documentation of this status within thirty days of initiation of relocation negotiations. Although incumbents are not obligated to negotiate during the voluntary negotiation period, they should be required to address whether they are eligible for an extended negotiation period as a public safety licensee. Failure to submit documentation within thirty days of an entity's initiation of relocation negotiations should constitute a waiver of the extended negotiation period. Such a rule will ensure that incumbent licensees respond promptly to requests from PCS entities desiring to clear spectrum.

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12 *NPRM* at ¶¶ 67,78.

13 *See NPRM* at ¶¶ 69, 78.

B. To Encourage Rapid Relocation, the Conversion of Analog Equipment to Digital Equipment Should Not Be Considered a Premium Payment During the Voluntary Negotiation Period

BellSouth continues to believe that later market entrants should not be required to reimburse Relocators for premium payments.[14] Accordingly, BellSouth supports the Commission's tentative conclusion to exclude such payments from its proposed reimbursement plan.

BellSouth urges the Commission to find, however, that the replacement of analog equipment with digital equipment does not constitute the payment of a premium *during the voluntary negotiation period.* The Commission has specifically stated that actual costs include such items as radio terminal equipment.[15] Further, the Commission has defined "comparable" facilities as equal to or superior to the facilities being replaced.[16] Thus, the replacement of analog equipment with digital equipment should be a reimbursable expense during voluntary negotiations.

Allowing full reimbursement for digital equipment during the voluntary period will encourage incumbents to act during the voluntary negotiation period because, should they defer relocation until the mandatory negotiation period, digital equipment should not be reimbursable. Such a policy would be consistent with the Commission's tentative conclusion that microwave incumbents should receive only the minimum comparable facilities during the mandatory negotiation period.[17] As the Commission expressly stated, "we do not regard PCS licensees as

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[14] *See* Comments of BellSouth, Petition for Rulemaking of Pacific Bell Mobile Services Regarding a Plan for Sharing the Costs of Microwave Relocation, at 2 (June 15, 1995) ("BellSouth Comments"); *see also NPRM* at ¶ 37; PCIA Comments, Petition for Rulemaking of Pacific Bell Mobile Services Regarding a Plan for Sharing the Costs of Microwave Relocation, at 15-16 (June 15, 1995).

[15] *NPRM* at ¶ 37.

[16] *NPRM* at ¶ 72.

[17] *See NPRM* at ¶¶ 69, 76.

being required to replace existing analog with digital equipment when an acceptable analog solution exists."[18]

C. Role of the Clearing House Under A Cost-Sharing Program

BellSouth applauds the Commission's tentative conclusion to allow an industry-supported clearing house to administer the cost-sharing program.[19] Under this approach, Commission resources would not be needed to facilitate microwave relocation. To ensure the unbiased administration of the cost-sharing program, the Commission should preclude the clearing house from resolving disputes. The functions of the clearing house should only be ministerial in nature. The clearing house, rather than the FCC, should track who has reimbursement rights, who should contribute, and how much is due under the revised Reimbursement Table, including application of the cost-sharing formula where appropriate.

1. The Attributes of a Clearing House

In evaluating organizations for their ability to serve as the clearing house, the Commission should consider the following.

- Is the organization independent and not-for-profit?
- Can the organization commence operations as the clearing house within 90 days from selection?
- Is the organization structured in a manner to ensure confidentiality?
- What experience does the organization have in spectrum and database management?
- Does the organization have a viable business plan for equitably securing start-up expenses and on going funding?

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[18] *NPRM* at ¶ 77.

[19] *NPRM* at ¶ 63; *accord* BellSouth Comments at 5-6.

By requiring the clearing house to be not-for-profit, the Commission encourages the clearing house to act efficiently, with a minimum staff. Further, by choosing an independent entity, the clearing house will be able to maintain its own integrity, as well as the legitimacy and fairness of the process itself. In this regard, the clearing house must be structured to ensure complete confidentiality, or it will have no credibility.

An organization desiring to serve as the clearing house also must be able to commence full operation within ninety days. This will expedite the cost-sharing process. To ensure the smooth, efficient, and rapid implementation of cost-sharing rules, any prospective clearing house applicant must be able to demonstrate its experience in spectrum management and present a reasoned and workable plan for securing start-up funds and on going funding. An organization with no experience with database or spectrum management would not serve as an adequate clearing house. The PCS industry should not have to suffer while an inexperienced organization obtains on-the-job training. Any entity appointed as the clearing house should demonstrate its ability to receive prior coordination notices ("PCNs") and relocation cost data electronically to ensure prompt responses.

PCS entities that object to the clearing house's determination should not be forced to resolve the issue with the clearing house. Rather, the Commission should require PCS entities desiring reimbursement through the clearing house to agree to use alternative dispute resolution ("ADR") procedures to resolve disputes.[20] Requiring the use of ADR procedures will minimize

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[20] The rules should specify that neither the Commission nor the clearing house can participate in the ADR process. The disputing parties should resolve the matter as though it were a private contractual dispute. The rules also should specify that PCS entities who are unwilling to use ADR will be precluded from receiving cost-sharing (continued...)

the drain on Commission resources and will allow the clearing house to focus on tracking reimbursement rights and calculating reimbursement obligations.

BellSouth opposes the Commission's proposal to "sunset" the clearing house in the year 2005. *See NPRM* at ¶¶ 39, 60, 61. Instead, the Commission should permit the industry to determine the appropriate time for dissolving the clearing house. At a minimum, the Commission should make clear that, even if the clearing house dissolves in the year 2005, payment obligations which extend beyond that date (*e.g.*, installment payments) must still be satisfied.

2. The Functioning of the Clearing House

PCS entities should be required to file all PCNs with the clearing house in accordance with the current recommendations of the National Spectrum Managers Association.[21] Once a PCN is received, the clearing house would determine whether operation of the PCS system would have caused co-channel interference to the relocated link if it had not been relocated. If interference would have occurred, the clearing house would calculate the contribution due the Relocator based on the revised formula and table on pages 3-9.

To expedite reimbursement and avoid unnecessary litigation, the Commission should emphasize that cost-sharing is required only when operation of a PCS system would have caused *co-channel* interference as determined by *TIA Bulletin 10-F*. Although the Commission makes

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[20] (...continued)
payments through the clearing house. If these entities wish to be reimbursed, they must engage in independent negotiations.

[21] *See* National Spectrum Managers, "PCS Coordination Procedures with Fixed Microwave Users in the 1.9 GHz Band," WG20.95.045 (adopted Oct. 31, 1995).

this very point in various places in the *NPRM*,[22] its discussion in paragraph 34 may lead some parties to seek reimbursement from PCS entities who would have caused adjacent channel interference to a relocated link.[23]

BellSouth concurs with the Commission's tentative conclusion that, for purposes of cost-sharing, interference should be determined according to the procedures set forth in TIA Bulletin 10-F (or the most current version thereof).[24] Further, for purposes of determining propagation loss, the FCC should adopt the Irregular Terrain Model, otherwise known as Longley-Rice, which the FCC recognizes as the most appropriate model for propagation loss prediction.[25] It is imperative that TIA Bulletin 10-F be the *only* method for determining PCS-to-microwave interference for purposes of cost-sharing.[26] Otherwise, parties could choose different methodologies which could result in conflicting conclusions.

These recommended methods for determining PCS-to-microwave interference offer a high degree of predictability and accuracy even when employed by different users. However,

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22 *See NPRM* at ¶¶ 52, 55.

23 In paragraph 34 of the *NPRM*, the Commission implies that a PCS system receives a benefit from the relocation of microwave links that would have received adjacent channel interference from operation of the PCS system.

24 *NPRM* at ¶¶ 52, 63.

25 *See* 47 C.F.R. Part 24, Subpart E, Appendix I-A.

26 The specific procedure for computing interference objectives suitable for determining cost-sharing obligations should be the use of the following equations from the current version of TIA Bulletin 10:

- Analog C/I Objective: Equation (A-9)
- Analog Threshold Degradation Objective: Equation (A-16)
- Digital Interference Objective: Equation (2.5.5-1)
- T/I Ratio: Equations (B-3) & (B-4)

because there are a number of commercially available software packages which employ these analytical tools, the clearing house should be directed to choose one of the software packages and to inform the PCS industry of its choice. In that way, all potential cost sharers will be able to calculate what their obligations will be and there will be no surprise or disagreement with the clearing house's analysis.

Regardless of which procedure the Commission adopts for triggering a cost-sharing obligation, it should produce consistent results. Consistent results will avoid unnecessary disputes and promote efficient and non-contentious operation of the cost-sharing mechanism and the clearing house.

D. Tower Modification Should Be Included in the $150,000 Cap on Shared Tower Expenses, Rather Than the $250,000 Cap on Non-Tower Relocation Expenses

In its comments on Pacific Bell Mobile Systems' Petition for Rulemaking, BellSouth supported PCIA's proposal to create a separate cost-sharing cap for the *construction* of towers for relocated facilities.[27] The purpose of this cap was to ensure that the allowable shared costs under the $250,000 per link cap were not swallowed by tower construction.[28]

Based on recent experience gained negotiating relocation agreements, BellSouth now believes that tower modifications should not be included in the $250,000 cap. BellSouth has discovered that many existing microwave towers are over stressed already and have deteriorated significantly over the twenty or more years of many systems' existence. These towers require

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[27] BellSouth Comments at 2-4.

[28] BellSouth Reply Comments, notes 30-31.

modifications at substantial expense before replacement facilities may be mounted on these towers. The need for modification is greatly exacerbated because the 2 GHz grid-type antennas are being replaced by solid antennas with much greater wind load requirements. In fact, much of the proposed $250,000 cap would be allocated to these modifications. Thus, if tower modifications are included in the capped per-link expenses, the Commission could be encouraging the construction of new towers, even though tower modifications might be more economical. Moreover, new tower construction is far more likely to face local opposition than making existing towers safe. New tower construction can mean extended regulatory delays associated with obtaining zoning permits or variances. These delays would hinder the rapid deployment of PCS. Accordingly, the Commission should specify that the separate $150,000 cap for towers applies to both construction and modification.[29]

E. Different Installment Plans Should Be Established For Entrepreneurs and UTAM

BellSouth commends the Commission on its installment payment plan for entrepreneurs. UTAM members would not be eligible, however, as entrepreneurs. Given the size of many of UTAM's members, such as AT&T, Ericsson, and NorTel, there is no need for licensed PCS providers to subsidize their relocation efforts. Accordingly, BellSouth urges the Commission to adopt a separate payment plan for UTAM that requires quarterly payments over a period of five years at an interest rate equivalent to prime plus three percent.

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[29] However, BellSouth again urges the Commission to specify that the $150,000 cap applies to the construction and modification of all towers associated with a link and not a separate cap of $150,000 for each tower associated with a link. *See* BellSouth Reply Comments at 4.

V. If a PCS Entity Has Acted In Good Faith Throughout the Negotiation Periods, Then It Should Be Responsible Only For Compensation For Comparable Facilities

Under the current relocation rules, a PCS entity that is unable to reach a relocation agreement with an incumbent 2 GHz microwave licensee must complete the following process before it can commence operations: (1) it must negotiate for two years with the incumbent non-public safety microwave licensee, (2) it must negotiate for another year with the same licensee, and (3) it must pay for, construct, and test new facilities for the incumbent. Once it has tested the new facilities and relocated the incumbent to these facilities, the incumbent can demand that the PCS entity relocate it back to its original frequencies if the incumbent decides that the new facilities are not comparable. BellSouth urges the Commission to modify this procedure.

Specifically, a PCS entity that has failed to reach an agreement with an incumbent by the end of the mandatory negotiation period should not be forced to build and test the incumbent's replacement facilities. Rather, the incumbent's operating status should automatically change to that of secondary status.

At a minimum, the PCS entity should be required only to pay for comparable facilities (as determined by independent estimates or ADR). The incumbent should be responsible for constructing and testing the facilities and should lose its right to relocate back to 2 GHz frequencies if its new facilities (that it built and tested) are not comparable.

Under the current rules, the microwave licensee has little incentive to relocate during the negotiation period given that PCS entities ultimately will have to pay for and construct the comparable replacement facilities at the end of the negotiations. If an incumbent is demanding a premium payment from a PCS entity, it has little incentive ever to agree to comparable facilities. The incumbent may even impede the PCS entity's access to its facilities and may not provide

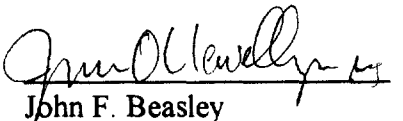
technical information necessary to complete a successful relocation. A PCS entity should not be held hostage by the incumbent's demands and should be freed of all obligations relative to the incumbent at the end of the mandatory negotiation period. The PCS entity should not be required to do the impossible (relocating a hostile incumbent's facilities) when it has acted in good faith and suffered significant delay in implementation of its full PCS system.

CONCLUSION

BellSouth supports the adoption of rules requiring PCS entities to share in the costs associated with relocating 2 GHz microwave incumbents that would have received interference from operation of their PCS systems. For the foregoing reasons, however, the Commission's cost-sharing proposal should be clarified and modified in order to minimize disputes and facilitate the rapid deployment of PCS systems.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 

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